IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition No.60 of 2002

State of Maharashtra and ors. Petitioners.

vs

Sou P.A. Bhosale & Ors. ..Respondents

Mr S.R. Nargholkar,Addl.G P for petitioners.

CORAM: H.S. BEDI, C.J. , &
V.M.KANADE, J.

DATE: 6th November, 2006.

P.C.:-

The facts relevant to the disposal of this petition are herein below:

1. Writ Petition No.1609 of 1997 was filed by one Shir Virji Bhoraj Bhansushali in this court. When the said petition came up for hearing a statement was made by the Government Pleader appearing on behalf of the State that he had no instructions in the matter from the department. This court in its order dated 12th January, 1998 thereupon opined that there appeared to be sheer negligence on the part of the department and by order dated 4th May 1998 directed that an enquiry be held in the matter so as to fix the responsibility on the officer who had defaulted in not giving instructions to the

government pleader. It appears that some inquiry was made by the Collector who opined that no negligence could be attributed to the respondent. A subsequent show cause notice was issued by the Divisional Commissioner to the respondent asking her to give her reply with regard to her negligence on 4th May, 1998. The Divisional Commissioner, considered the reply and rejected the same and imposed a minor penalty of stoppage of one increment for one year without cumulative effect vide his order dated 8.2.1999. This order was challenged by the respondent before the Maharashtra Administrative Tribunal which vide its judgment order dated 13.9.2001 quashed the impugned order. The State Government has filed the present petition challenging the judgment aforesaid.

2. We have heard the learned Addl. Government Pleader for the petitioners. The findings recorded by the Tribunal are three-fold; (1) there was no negligence on the part of the respondent as she had been called upon to attend the office of the Collector on the same day and time and that she had deputed her subordinate Shri Kadam to attend court in her place; (2) that the Collector had exonerated the respondent of

the charge and the Divisional Commissioner was thus not authorised to conduct a second inquiry and take a different view in the matter and (3) that as the respondent was a Class I officer, the Divisional Commissioner did not have jurisdiction to make an order imposing a punishment. We are of the opinion that the order of the tribunal is absolutely justified. It has come on record that the respondent had been called to the office of the Collector and she had authorised one Shri Kadam to appear in court but for some reason he did not do so. To our mind, therefore, the respondent had taken all steps to ensure that the department was represented in court on the relevant date and the misconduct or negligence, if any, was at the hands of Shri Kadam. We also find that the Collector had accepted the explanation given by the respondent and had exonerated her of any negligence. The Divisional Commissioner could not have therefore conducted a second proceeding on the same charge and to have indicted her.

3. In view of the two grounds referred to above, the third question need not be gone into. The writ petition is accordingly dismissed with no order as to costs.

CHIEF JUSTICE.

V.M.KANADE, J.